

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

PREFERRED TAX SERVICE, INC.,	:	
	:	
	:	Civil Action No.
Plaintiff,	:	1:05-CV-00872-SLR
	:	
v.	:	
	:	
THE TAX AUTHORITY, INC., <u>et al.</u> ,	:	
	:	
Defendants.	:	

**MOTION OF DEFENDANTS THE TAX AUTHORITY, INC. AND
KENNETH M. LEESE TO STRIKE LETTER OR, IN
THE ALTERNATIVE, TO GRANT LEAVE FOR A RESPONSE.**

Defendants The Tax Authority, Inc. ("Tax Authority"), and Kenneth M. Leese ("Leese"), by their counsel, move to strike the letter filed by plaintiff on January 27, 2006 [D.I. No. 28], and state as follows:

1. Plaintiff instituted this action on December 16, 2005 by filing a Complaint [D.I. No. 1], which purports to state eight claims against all defendants.

2. Contemporaneous with its Complaint, plaintiff also filed a Motion for Temporary Restraining Order ("TRO Motion") [D.I. No. 2] on December 16, 2005.

3. On January 5, 2006, Tax Authority and Leese filed a Brief in opposition to the TRO Motion, as well as the Affidavit of Kenneth M. Leese which is included in the supporting Appendix [D.I. No. 14].

4. On January 19, 2006 -- after a telephone conference during which the Court set a schedule for replies -- plaintiff filed a Reply Brief in support of its TRO Motion

[D.I. No. 23].

5. On January 26, 2006, without leave of Court and contrary to the Chief Judge Robinson's Chambers Procedures, plaintiff filed a letter in further support of its TRO Motion ("Letter") [D.I. No. 28].

6. Accordingly, the Letter, which is a disguised supplemental brief, should be stricken in its entirety.

7. Moreover, plaintiff's allegations in the Letter that defendants made "intentionally misleading statements" are misplaced and prejudicial.

8. In particular, at the time plaintiff filed its TRO Motion and alleged that it was suffering irreparable harm -- December 16, 2005 -- Tax Authority had not yet opened its tax preparation business at the Piane Defendants' property. This was equally true on January 5, 2006, when defendants filed their Brief in Opposition to Plaintiff's TRO Motion and Mr. Leese's supporting Affidavit [D.I. No. 14].

9. Contrary to plaintiff's accusation in the Letter Brief, defendants did not hide or "bury" these facts.

10. In fact, defendants made very clear that Tax Authority fully intended to proceed with the opening of its tax preparation business at the Piane Defendants' property. [See D.I. No. 14 (Lease Affidavit, ¶ 26; Brief in Opposition to TRO Motion at 6, 12).]

11. Accordingly, the opening of Tax Authority's business at the Piane Defendants' property -- its second tax preparation business in Wilmington -- did not come as any surprise to plaintiff.

12. Most important, this has no bearing on the TRO Motion, as there is no basis for the Court to exercise jurisdiction and the Complaint should be dismissed in its entirety.

13. Moreover, plaintiff still has not demonstrated any potentially irreparable harm, as there is no evidence that Tax Authority has used any confidential information, and even if it did so plaintiff would have an adequate remedy at law.

14. If the Letter is not stricken, defendants should, in the alternative, be given an opportunity to fully respond to address these issues.

15. In accordance with Local Rule 7.1.1, the Statement of Patrick J. Doran, Esquire, which confirms the reasonable efforts made by defendants to resolve this dispute before filing this Motion, is attached.



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